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No. 86-870

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

PHILLIPS PETROLEUM COMPANY and
CINQUE BAMBINI PARTNERSHIP,
Petitioners,

v.

STATE OF MISSISSIPPI and
SAGA PETROLEUM, U.S., INC.,
Respondents.

On Writ of Certiorari to the Supreme Court of Mississippi

RESPONSE TO PETITIONERS' MEMORANDUM OPPOSING STATE OF MISSISSIPPI'S MOTION TO DISMISS WRIT AS IMPROVIDENTLY GRANTED

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Counsel of Record for Respondent State of Mississippi humbly and respectfully apologizes to the Court if he has chosen the wrong vehicle for presenting a previously overlooked Congressional Act to the Court. Respondent is quite aware that once certiorari has been granted it is extremely rare for the Court to dismiss the writ; however, Respondent is also aware that the time of the Court is extremely precious and that time spent on a moot question, if that be the case, could be better utilized elsewhere.

No excuse can be offered for failure to mention the Act at an earlier stage, however the importance of the Congressional authority cited to the Court and its impact on the question presented by Petitioners were judged by Re-

spondents to outweigh the concern of additional infringement on the limited time of the Court and inconvenience to Petitioners.

Additionally, Petitioners are quite right in their response to Respondent's Motion that Counsel for the Respondent did not assert that the ". . . grant of certiorari was triggered by some kind of misrepresentation made to the Court by the Petitioners . . . ." Petitioners' Memorandum, p. 2. Counsel for the Respondent are unwilling to take that giant, insulting step. However, the effect of the text and citation in Petitioners' Brief is the same as if there were such a misrepresentation; that is, a patently inadequate explanation of the parameters of the definition of "navigable waters" under the Submerged Lands Act.

The purpose of Respondent's Motion was simply to call to the Court's attention the applicable provisions of the Submerged Lands Act and consequently the alleged mootness of the question presented by Petitioners.

Respectfully submitted,

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